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By ECF and Email

The Honorable Andrew L. Carter, Jr.
United States District Judge
Thurgood Marshal United States Courthouse
40 Foley Square
New York, New York 10007

Re: *Ferguson et al. v. Ruane, Cunniff & Goldfarb, Inc., et al.*, 1:17-cv-06685-ALC

Dear Judge Carter:

I write to advise the Court of additional developments that are relevant to the request by DST Systems, Inc. ("DST") that this Court enjoin the Arbitration Claimants.

First, Counsel for the Arbitration Claimants is pleased to report that the first seven (7) awards favoring DST have been vacated by appellate arbitrators. In one of the cases reversed on appeal, the appellate arbitrator held that "the record below and the applicable law only reasonably support the conclusion that [DST Systems, Inc.] breached its fiduciary duty by breaching its duty to diversify the Plan portfolio, by breaching its continuing duty of prudence, and by breaching its duty to monitor the Plan's investment manager." In another of the cases, the appellate arbitrator held that "as a matter of law the action of DST through its Advisory Committee violated ERISA. No factfinder could reach a different conclusion. If this were a partial summary judgment motion filed by [the Claimant], it should have been granted."

As of today, not a single award in favor of DST has been affirmed on appeal. Thus, even the small percentage of Arbitration Claimants who originally lost to DST are benefitting from the arbitration process as those awards are reversed on appeal.

Second, the U.S. District Court for the Western District of Missouri has now confirmed arbitration awards in favor of the following seventy-six (76) plan participants:

Michael Murphy v. DST Systems, Inc., No. 4:21-mc-174;
Nick Rutkowski v. DST Systems, Inc., No. 4:21-cv-705;
Brenda Keeton v. DST Systems, Inc., No. 4:21-mc-9006;
Brent Mayberry v. DST Systems, Inc., No. 4:21-mc-9007;
Michelle O'Brien v. DST Systems, Inc., No. 4:21-mc-9008;
Deborah Quast v. DST Systems, Inc., No. 4:21-mc-9009;
Rob Parrot v. DST Systems, Inc., No. 4:21-mc-9012;
Theresa Hursh v. DST Systems, Inc., No. 4:21-cv-9017;
Maria Alvarado v. DST Systems, Inc., No. 4:21-cv-9018;

Jason Hamilton v. DST Systems, Inc., No. 4:21-cv-9019;
John Oswald v. DST Systems, Inc., No. 4:21-cv-9020;
Stephanie McMillin v. DST Systems, Inc., No. 4:21-cv-9021;
David Eisnberger v. DST Systems, Inc., No. 4:21-cv-9022;
Melody Miser v. DST Systems, Inc., No. 4:21-cv-9023;
Travis Schulte v. DST Systems, Inc., No. 4:21-cv-9024;
Angie Manske v. DST Systems, Inc., No. 4:21-cv-9025;
Katherine Gillespie v. DST Systems, Inc., No. 4:21-cv-9026;
Fred Quatrocky v. DST Systems, Inc., No. 4:21-cv-9027;
Kent Clower v. DST Systems, Inc., No. 4:21-cv-9028;
Matthew Axton v. DST Systems, Inc., No. 4:21-cv-9029;
Gary Blanck v. DST Systems, Inc., No. 4:21-cv-9030;
Kiva Miller v. DST Systems, Inc., No. 4:21-cv-9031;
Bernard Billesbach v. DST Systems, Inc., No. 4:21-cv-9032;
Lisa Kudrick v. DST Systems, Inc., No. 4:21-cv-9033;
Percy Payne v. DST Systems, Inc., No. 4:21-cv-9034;
Janet Kannard v. DST Systems, Inc., No. 4:21-cv-9035;
Vanessa Bross v. DST Systems, Inc., No. 4:21-cv-9036;
Patrick Williams v. DST Systems, Inc., No. 4:21-cv-9037;
Scott Yungeberg v. DST Systems, Inc., No. 4:21-cv-9038;
Anne Arnold v. DST Systems, Inc., No. 4:21-cv-9042;
Caryl Summers v. DST Systems, Inc., No. 4:21-cv-9043;
Cindy Gordanier v. DST Systems, Inc., No. 4:21-cv-9044;
Jason Green v. DST Systems, Inc., No. 4:21-cv-9045;
Kelly Highfill v. DST Systems, Inc., No. 4:21-cv-9046;
Kole Scarbrough v. DST Systems, Inc., No. 4:21-cv-9047;
Matt Kolakowski v. DST Systems, Inc., No. 4:21-cv-9048;
Michael Brandt v. DST Systems, Inc., No. 4:21-cv-9049;
Mitchell Schwartz v. DST Systems, Inc., No. 4:21-cv-9050;
Molly Eaton v. DST Systems, Inc., No. 4:21-cv-9051;
Jason Sutton v. DST Systems, Inc., No. 4:21-cv-9052;
Janet Howell v. DST Systems, Inc., No. 4:21-cv-9053;
Barney Frazier v. DST Systems, Inc., No. 4:21-cv-9054;
Loren Province v. DST Systems, Inc., No. 4:21-cv-9055;
Lisa Cracraft v. DST Systems, Inc., No. 4:21-cv-9056;
Larry Squires v. DST Systems, Inc., No. 4:21-cv-9057;
Stacey Goins v. DST Systems, Inc., No. 4:21-cv-9058;
Benjamin Redwing v. DST Systems, Inc., No. 4:21-cv-9060;
Terry Teghtmeyer v. DST Systems, Inc., No. 4:21-cv-9061;
Bruce Zollars v. DST Systems, Inc., No. 4:21-cv-9062;
Linda Denny-Glynn v. DST Systems, Inc., No. 4:21-cv-9063;
Kim Gale v. DST Systems, Inc., No. 4:21-cv-9064;
Mark Cunningham v. DST Systems, Inc., No. 4:21-cv-9065;
Linda Calder v. DST Systems, Inc., No. 4:21-cv-9066;
Kim Bolch v. DST Systems, Inc., No. 4:21-cv-9067;
Joshua Cook v. DST Systems, Inc., No. 4:21-cv-9068;

Josh P. Harper v. DST Systems, Inc., No. 4:21-cv-9069;
Diana Conelly Justus v. DST Systems, Inc., No. 4:21-cv-9070;
Keely Inman v. DST Systems, Inc., No. 4:21-cv-9071;
Johnathan Breckenridge-Mitchell v. DST Systems, Inc., No. 4:21-cv-9065;
Barbara O'Mara v. DST Systems, Inc., No. 4:21-cv-9073;
Dana Griem v. DST Systems, Inc., No. 4:21-cv-9074;
Karen Owens v. DST Systems, Inc., No. 4:21-cv-9075;
Waiyee Juley Tsang v. DST Systems, Inc., No. 4:21-cv-9076;
Jackie Older-Hefner v. DST Systems, Inc., No. 4:21-cv-9077;
Amy Keller v. DST Systems, Inc., No. 4:21-cv-9078;
Dennis Dunbar v. DST Systems, Inc., No. 4:21-cv-9079;
Bruce Allen v. DST Systems, Inc., No. 4:21-cv-9080;
Russ Brooks v. DST Systems, Inc., No. 4:21-cv-9081;
Kristy Hill Revis v. DST Systems, Inc., No. 4:21-cv-9082;
Tina Carey v. DST Systems, Inc., No. 4:21-cv-9083;
Phillip Biggs v. DST Systems, Inc., No. 4:21-cv-9084;
Matt Dunn v. DST Systems, Inc., No. 4:21-cv-9085;
Rob Berkstresser v. DST Systems, Inc., No. 4:21-cv-9086;
Camille Jackson v. DST Systems, Inc., No. 4:21-cv-9087;
Meri Ann Mason v. DST Systems, Inc., No. 4:21-cv-9088;
Stephanie Brown v. DST Systems, Inc., No. 4:21-cv-9089.

In each of the actions listed above, the Western District of Missouri continues to address and respond to each of the arguments asserted by DST in opposition to the motions to confirm. As before, the Western District continues to hold that DST's "crass manipulation of the legal process constitutes an insult to the integrity of the judicial system and fully warrants invocation of the doctrine of judicial estoppel." Indeed, "[t]he only thing that would be unfair would be to let DST escape the consequences of the arbitration proceedings in which it voluntarily participated because they did not turn out as DST hoped they would." And because the *Ferguson* plaintiffs continue to support DST's "crass" effort to nullify these arbitration awards, their appointment as class representatives of the arbitration claimants continues to flagrantly violate due process.

A copy of the Western District's most recent order is attached for the Court's convenience.

As always, we will continue to update Your Honor as to any further developments.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "AS", with a long horizontal flourish extending to the right.

Andrew Schermerhorn

cc: All counsel of record